UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1998/SR.51/Add.1
3 December 1998

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Nineteenth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 51st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 December 1998, at 11.20 a.m.

Chairperson: Mr. ALSTON

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1998/SR.51.

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The public part of the meeting was called to order at 11.20 a.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

Draft general comment 9: The domestic application of the Covenant (continued)

1. The CHAIRPERSON invited the Committee to consider the revised version of draft general comment 9 (document with no symbol), which incorporated amendments proposed at the forty-third meeting, when only the English-language version had been available. He suggested that the Committee should examine the document paragraph by paragraph, recapitulating the amendments incorporated and proposing any further amendments deemed necessary.

2. He began by drawing attention to the new side heading, "(a) "The duty to give effect to the Covenant in the domestic legal order", introduced for the sake of consistency with other side headings in the document.

Paragraph 1

3. The CHAIRPERSON said that two new introductory sentences had been added, which read: "In its General Comment No. 3 (1990) the Committee addressed issues relating to the nature and scope of States parties' obligations. The present General Comment seeks to elaborate further on certain elements of the earlier statement." A drafting amendment had also been made to the third sentence: the word "therein" had been added after "recognized".

Paragraph 2

4. The CHAIRPERSON drew attention to the words added at the end of the first sentence: "recognized in the Covenant".

Paragraph 3

5. The CHAIRPERSON said that the second sentence had been replaced by two sentences quoting the exact wording of article 27 of the Vienna Convention on the Law of Treaties 1969, and reading: "'[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. In other words, States should modify the domestic legal order as necessary in order to give effect to their treaty obligations."

6. Mr. GRISSA asked whether, in the light of the provision of the Vienna Convention that a "party may not invoke the provisions of its internal law as justification for its failure to perform a treaty", a State party would be permitted to enter reservations to provisions of the Covenant on the grounds that they conflicted with its internal religious law.

7. The CHAIRPERSON said that States were permitted to enter reservations when ratifying the Covenant, provided that those reservations were compatible with its object and purpose. Blanket reservations concerning all the provisions of the Covenant that potentially conflicted with Islamic law would not be acceptable, on account of their imprecise nature. On the other hand, a

specific reservation entered, for example, on the grounds that the Covenant's provisions concerning non-discrimination conflicted with a State's internal laws concerning marital property would probably be acceptable.

8. Mr. RIEDEL reminded the Committee that the International Law Commission was dealing with the question of reservations, with particular reference to human rights treaties. The general tendency was to take an extremely restrictive view of reservations. The wording of paragraph 3 sensibly avoided that contentious issue.

9. The CHAIRPERSON noted that in side heading (b) the word "place" has been replaced by "status".

Paragraph 4

10. The CHAIRPERSON said that in the first sentence the word "Ideally" had been replaced by the words "In general". On a proposal by Mr. Ceausu, the last two sentences had been deleted and replaced by the following: "The rule requiring the exhaustion of domestic remedies reinforces the primacy of national remedies in this respect. The existence and further development of international procedures for the pursuit of individual claims is important but they are ultimately only supplementary to effective national remedies."

Paragraph 5

11. The CHAIRPERSON said that in the second sentence he had replaced the word "particular" by "specific". In response to suggestions made during the earlier meeting, the last sentence had been deleted and replaced by two sentences which read: "Although the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party. The means chosen are also subject to review as part of the Committee's examination of the State party's compliance with its Covenant obligations."

12. Mr. SADI wondered whether, in view of the problems the Committee had encountered with the Federal Government of Canada, it might be appropriate to incorporate in paragraph 5 a sentence about the accountability of federal governments in ensuring compliance by their Member States with the provisions of the Covenant.

13. The CHAIRPERSON suggested that, rather than adding a sentence along those lines to paragraph 5, it might be better to draft a short general comment on the responsibility of federal States, so that the Committee could refer to it when similar problems arose in future. He would be willing to draft one for consideration by the Committee during the current session.

14. Mr. RIEDEL endorsed that suggestion. He drew attention to the relevance of the passage from the Vienna Convention on the Law of Treaties, quoted in paragraph 3, to questions of federal responsibility.

15. The CHAIRPERSON said he took it that the Committee agreed to the idea of a new draft general comment on the question of federal responsibility, which he would draft taking into account the comments by Mr. Riedel and Mr. Sadi. He suggested that a reference to the new draft comment should be included in paragraph 3.

16. It was so decided.

Paragraph 6

17. The CHAIRPERSON said that the first sentence of paragraph 6 had been amended to read: "An analysis of State practice with respect to the Covenant shows that States have used a variety of approaches. Some States have failed to do anything specific at all. Of those that have taken measures, a variety of approaches has been used. Thus...". On a proposal by Mr. Ceausu, a penultimate sentence had been added, reading: "This has often been done by means of constitutional provisions according priority to the provisions of international human rights treaties over any inconsistent domestic laws."

Paragraph 7

18. The CHAIRPERSON said that on his own initiative he had amended the first sentence of paragraph 7 to read: "But whatever the preferred methodology, several principles follow from the duty to give effect to the Covenant and must therefore be respected." The words "where appropriate" had been deleted from the third sentence and the word "must" replaced by the word "should" in the fourth sentence. The reference to programmatic provisions had been deleted, and the final sentence thus now read: "Any such analysis would need to take account of the fact that the formulations used in the Covenant are, for the most part, comparable to those used in treaties dealing with civil and political rights."

19. Mr. RIEDEL proposed that the words "for the most part" should be replaced by the words "to a considerable extent".

20. It was so agreed.

Paragraph 8

21. Mr. KOUZNETSOV said he was not happy with the formulation "formal adoption or incorporation of the Covenant in national law", in the last sentence of paragraph 8. Strictly speaking, a text could not be "incorporated" without first being formally adopted. He favoured deletion of the reference to "incorporation"; however, he was prepared to accept the text as it stood.

22. Mr. RIEDEL said that the problem was one of translation: the English text clearly reflected the various modes of "acceptance" of international law into the domestic legal order.

Paragraph 9

23. The CHAIRPERSON said that paragraph 9 remained unchanged, except for the insertion of the words ", based on the principle of good faith," after the words "a legitimate expectation".

Paragraph 10

24. The CHAIRPERSON said that a final sentence had been added to paragraph 10, reading: "It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society."

Paragraph 11

25. The CHAIRPERSON said that, in response to an objection raised by Mr. Pillay, it had been agreed to add the words "in systems where that option is provided for" at the end of the first sentence. In response to a request by Mr. Ceville for examples to be cited in paragraph 11, he had inserted two sentences, which read: "Thus, for example, when Governments are involved in court proceedings, they should promote interpretations of domestic laws which give effect to their Covenant obligations. Similarly, judicial training should take full account of the justiciability of the Covenant." The first example derived from the Committee's consideration of the third periodic report of Canada, which had revealed that government authorities were defending propositions inconsistent with the Covenant in Canadian courts.

Paragraph 12

26. The CHAIRPERSON said that, on a proposal by Ms. Jiménez Butragueño, a final sentence had been added to paragraph 12, reading: "In particular, the Committee requests that States parties provide details of any significant jurisprudence from their domestic courts that makes use of the provisions of the Covenant."

27. Mr. GRISSA asked whether it would be possible to insert the words "or contradicts" after the words "makes use of".

28. The CHAIRPERSON said that Mr. Grissa's logic was impeccable, but it would perhaps be unfair to call upon a State to pass judgement on its own courts.

29. Mr. TEXIER said that very few States currently had any jurisprudence referring directly to the Covenant. Where such jurisprudence existed, it was generally in conformity with the Covenant, Canada being exceptional in that regard. It would perhaps be better not to include a formulation that might give States ideas!

30. The CHAIRPERSON said that a further problem was that in such cases courts did not dismiss the Covenant, but simply ignored it. There seemed to be a general feeling that the formulation proposed by Mr. Grissa was best omitted.

Paragraphs 13 and 14

31. The CHAIRPERSON said that on first reading it had been proposed to delete the words "with appreciation" from the second sentence of paragraph 13.

Paragraph 15

32. The CHAIRPERSON said he had tried to round off the draft general comment on a high note, by adding a concluding sentence which read: "Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights." A great many jurisdictions had, if nothing else, equality and non-discrimination provisions, which could be used as a vehicle for implementation of the Covenant. If he heard no objection, he would take it that the Committee wished to adopt draft general comment 9 as revised on first reading, subject to the incorporation of a reference to another general comment on the responsibility of Federal States, which would shortly be forthcoming.

33. General Comment 9 was adopted.

Draft general comment 10: The role of national human rights institutions in the protection of economic, social and cultural rights (continued)

34. The CHAIRPERSON invited the Committee to comment on the revisions which had been made. It would be remembered that only the English-language version had been available to the Committee when it first discussed the draft, and that the words "human rights" had been added before "institutions" in the title.

Paragraph 1

35. There were no comments.

Paragraph 2

36. The CHAIRPERSON said that in the second sentence he would like to replace the words "In most cases" by "In many cases", in order to take account of the fact that a significant number of newly established national institutions did not have the characteristics described.

37. Mr. RIEDEL, on a point of grammar, said that "ombudsman" in the first sentence should be changed to "ombudsmen".

38. Mr. WIMER proposed some stylistic changes to the first sentence of the Spanish version.

39. Mr. TEXIER questioned the French word used to translate the English word "advocates".

40. The CHAIRPERSON said that there still seemed to be some confusion about the exact meaning of "human rights defenders", as used in paragraph 2. He

would consult with French- and Spanish-speaking members of the Committee to find a more effective and consistent formula. He would also examine the sentence referred to by Mr. Texier.

Paragraph 3

41. Mr. WIMER said that the fourth sentence gave a rather negative impression in referring to a list that was "by no means exhaustive". He therefore proposed the deletion of that phrase and the redrafting of the rest of the sentence to read: "The following list is indicative of the types of activities that can be, and already have been, undertaken by national institutions in relation to these rights:".

42. He proposed the deletion of the words "State party" in subparagraph (f) to make it clear that the subparagraph also concerned other parties which might violate Covenant rights.

43. Mr. RIEDEL said that in subparagraph (d) he would like the term "national-level" to be retained. Although the chapeau already referred to "national institutions", he felt it was better to leave no room for doubt in the subparagraph.

44. Mrs. JIMÉNEZ BUTRAGUEÑO said that she would like the enumeration at the end of subparagraph (a) to be amended to include "the security services", which would be in line with the Committee's usual practice.

45. Mr. RIEDEL observed that the enumeration should be as succinct as possible, and that its first item, "the public service" covered the police and the armed services.

46. Mrs. JIMÉNEZ BUTRAGUEÑO said that she was not convinced, but would not insist if the Committee thought otherwise.

47. Mr. WIMER agreed with Mr. Riedel. The police and the armed forces were public servants, and if they were to be mentioned separately in the document under discussion, the Committee would be obliged to repeat the practice in future documents.

Paragraph 4

48. Mr. AHMED, on a point of grammar, said that in the second line "includes" should be amended to "include".

49. The CHAIRPERSON said that in the absence of any further comments he took it that the Committee wished to adopt the revised draft, subject to minor corrections as agreed.

50. General comment 10 was adopted.

ORGANIZATION OF WORK (agenda item 2) (continued)

Future days of general discussion

51. The CHAIRPERSON invited members to consider possible subjects for the days of general discussion to be held at forthcoming sessions of the Committee. He had received a letter from the NGO Physicians for Human Rights, urging the Committee to return to the question of the right to health. That was one possible topic for a day of discussion.

52. Mr. GRISSA supported the Chairperson's suggestion. Another important issue with global repercussions that might prove a suitable topic was the economic, social and cultural rights of refugees in the host countries, and of internally displaced persons in their own countries.

53. The CHAIRPERSON welcomed Mr. Grissa's proposal. Taking account of internally displaced persons, there were now approximately 30 million refugees in the world. Refugee groups could be invited to participate in the day of general discussion.

54. Mr. TEXIER also supported Mr. Grissa's proposal. A day of general discussion devoted to that topic would enable the Committee to focus on a problem that had become increasingly relevant with the application of the Schengen Agreements by the European Union. The problem would be to confine the discussion to the economic, social and cultural aspects of the plight of refugees and internally displaced persons. He welcomed the idea of involving refugee groups in the day of general discussion.

55. Another possible topic was article 6, on the right to work, an issue that had been somewhat neglected in comparison with the rights provided for under article 7. Like the rights to education, health and housing, the right to work was one much misunderstood by States parties, who tended to see it as an objective rather than as a justiciable right. A day of discussion devoted to that issue would help address the burning contemporary problem of unemployment, and might also help the Committee to hammer out a better definition of that right. He also supported the Chairperson's suggestion for a possible topic: the right to health was a subject that was far from having been exhausted.

56. Mr. RIEDEL said that all the proposed topics were worthy of consideration; the Committee must decide which should be accorded priority. He favoured taking up the right to health at the next session, as that was a topic of which the Committee already had some experience. Refugees' rights should be taken up at the Committee's November 1999 session, but would require careful preparation if the day of general discussion was to be properly focused. The right to work was another fascinating and difficult issue that the Committee should address at some point.

57. Ms. BONOAN-DANDAN agreed with Mr. Riedel. The right to health was a subject very familiar to the Committee, whereas considerable preparation would be required for discussions on refugees and on the right to work. Anyway, those should be the first three topics. In future the Committee might adopt the more focused approach used by the Committee on the Rights of the Child in

preparing days of discussion. That would discourage participants from contributing standard statements that did not address the specific concerns on which the Committee wished to concentrate.

58. Mrs. JIMÉNEZ-BUTRAGUEÑO said she agreed with all the suggestions that had been made for future discussion topics. Another subject which should be taken up as soon as possible after the first three, and which was at least as important as the right to work, was the right to social security.

59. A further topic which merited a day of discussion was the family's right to protection, including the rights of grandparents. The phenomenon of ageing populations meant that in many cases four generations of the same family were living concurrently.

60. Nowadays there was much debate about the family; its shape was changing, and new situations were arising. For example, what were the rights of grandparents who no longer had access to their grandchildren because the parents had divorced? All the topics which had been suggested for days of discussion and those she had suggested concerned family rights. Refugee families, in particular, needed greater protection.

61. The CHAIRPERSON said that the previous speaker had raised some important issues which would doubtless feature on the agenda of future Committee sessions.

INQUIRIES ABOUT THE CIRCUMSTANCES OF ABSENT MEMBERS OF THE COMMITTEE

62. The CHAIRPERSON, replying to comments made about absent members, said he would be pleased to convey the Committee's best wishes for a swift recovery to Mr. Antanovich. With regard to Mr. Muterahejuru, former Committee member who had been imprisoned in his native Rwanda in 1994, although Human Rights Watch had managed to visit him in jail in 1996, nothing more had been heard. The present and former United Nations High Commissioner for Human Rights had taken up the case, and he himself had written letters to many parties, including the President of Rwanda. He undertook to renew inquiries on the Committee's behalf, beginning with the High Commissioner for Human Rights.

The meeting rose at 12.45 p.m.